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# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that the film industry in  
2       Hawaii is an important component of a diversified economy. The  
3       legislature also finds that the motion picture, digital media,  
4       and film production income tax credit has been effective in  
5       stimulating the economy and creating quality jobs while  
6       promoting Hawaii as a visitor destination.

7       The legislature further finds that the film production  
8       process can extend over several years due to extensive planning  
9       and development in the preproduction stage. Act 143, Session  
10      Laws of Hawaii 2017, extended to January 1, 2026, the sunset  
11      date of certain amendments made to the motion picture, digital  
12      media, and film production income tax credit and added an annual  
13      \$35,000,000 cap on the tax credit. After January 1, 2026, the  
14      credit will be reenacted, in a different form and without the  
15      cap, as the motion picture and film production income tax  
16      credit. Although the annual \$35,000,000 cap was placed on the  
17      tax credit, it was a "rolling cap" so that any claims for a



1 credit that exceeded \$35,000,000 in one year could be applied  
2 toward the following year's cap, except for the final, seventh  
3 year of the tax credit in the year 2026.

4 The legislature finds that this cap has created some  
5 uncertainty in the industry and may act as a disincentive for  
6 new and longer-term productions that may be in the development  
7 and preproduction phases; therefore, the cap should be removed  
8 even before it is scheduled to repeal on January 1, 2026.

9 The purpose of this Act is to remove the annual \$35,000,000  
10 cap on the motion picture, digital media, and film production  
11 income tax credit.

12 SECTION 2. Section 235-17, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§235-17 Motion picture, digital media, and film  
15 production income tax credit. (a) Any law to the contrary  
16 notwithstanding, there shall be allowed to each taxpayer subject  
17 to the taxes imposed by this chapter, an income tax credit that  
18 shall be deductible from the taxpayer's net income tax  
19 liability, if any, imposed by this chapter for the taxable year  
20 in which the credit is properly claimed. The amount of the  
21 credit shall be:



(1) Twenty per cent of the qualified production costs incurred by a qualified production in any county of the State with a population of over seven hundred thousand; or

(2) Twenty-five per cent of the qualified production costs incurred by a qualified production in any county of the State with a population of seven hundred thousand or less.

A qualified production occurring in more than one county may prorate its expenditures based upon the amounts spent in each county, if the population bases differ enough to change the percentage of tax credit.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified production costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rule.

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal



1 Revenue Code of 1986, as amended, no tax credit shall be allowed  
2 for those costs for which the deduction is taken.

3 The basis for eligible property for depreciation of  
4 accelerated cost recovery system purposes for state income taxes  
5 shall be reduced by the amount of credit allowable and claimed.

6 (b) The credit allowed under this section shall be claimed  
7 against the net income tax liability for the taxable year. For  
8 the purposes of this section, "net income tax liability" means  
9 net income tax liability reduced by all other credits allowed  
10 under this chapter.

11 (c) If the tax credit under this section exceeds the  
12 taxpayer's income tax liability, the excess of credits over  
13 liability shall be refunded to the taxpayer; provided that no  
14 refunds or payment on account of the tax credits allowed by this  
15 section shall be made for amounts less than \$1. All claims,  
16 including any amended claims, for tax credits under this section  
17 shall be filed on or before the end of the twelfth month  
18 following the close of the taxable year for which the credit may  
19 be claimed. Failure to comply with the foregoing provision  
20 shall constitute a waiver of the right to claim the credit.

21 (d) To qualify for this tax credit, a production shall:



- 1 (1) Meet the definition of a qualified production  
2 specified in subsection ~~[(m)-]~~ (1);
- 3 (2) Have qualified production costs totaling at least  
4 \$200,000;
- 5 (3) Provide the State a qualified Hawaii promotion, which  
6 shall be at a minimum, a shared-card, end-title screen  
7 credit, where applicable;
- 8 (4) Provide evidence of reasonable efforts to hire local  
9 talent and crew;
- 10 (5) Provide evidence when making any claim for products or  
11 services acquired or rendered outside of this State  
12 that reasonable efforts were unsuccessful to secure  
13 and use comparable products or services within this  
14 State; and
- 15 (6) Provide evidence of financial or in-kind contributions  
16 or educational or workforce development efforts, in  
17 partnership with related local industry labor  
18 organizations, educational institutions, or both,  
19 toward the furtherance of the local film and  
20 television and digital media industries.



1           (e) On or after July 1, 2006, no qualified production cost  
2 that has been financed by investments for which a credit was  
3 claimed by any taxpayer pursuant to section 235-110.9 is  
4 eligible for credits under this section.

5           (f) To receive the tax credit, the taxpayer shall first  
6 prequalify the production for the credit by registering with the  
7 department of business, economic development, and tourism during  
8 the development or preproduction stage.

9           (g) The director of taxation shall prepare forms as may be  
10 necessary to claim a credit under this section. The director  
11 may also require the taxpayer to furnish information to  
12 ascertain the validity of the claim for credit made under this  
13 section and may adopt rules necessary to effectuate the purposes  
14 of this section pursuant to chapter 91.

15           (h) Every taxpayer claiming a tax credit under this  
16 section for a qualified production shall, no later than ninety  
17 days following the end of each taxable year in which qualified  
18 production costs were expended, submit a written, sworn  
19 statement to the department of business, economic development,  
20 and tourism, together with a verification review by a qualified  
21 certified public accountant using procedures prescribed by the



1 department of business, economic development, and tourism,  
2 identifying:

- 3 (1) All qualified production costs as provided by  
4 subsection (a), if any, incurred in the previous  
5 taxable year;  
6 (2) The amount of tax credits claimed pursuant to this  
7 section, if any, in the previous taxable year; and  
8 (3) The number of total hires versus the number of local  
9 hires by category and by county.

10 This information may be reported from the department of  
11 business, economic development, and tourism to the legislature  
12 in redacted form pursuant to subsection (i)(4).

13 (i) The department of business, economic development, and  
14 tourism shall:

- 15 (1) Maintain records of the names of the taxpayers and  
16 qualified productions thereof claiming the tax credits  
17 under subsection (a);  
18 (2) Obtain and total the aggregate amounts of all  
19 qualified production costs per qualified production  
20 and per qualified production per taxable year;



1           (3) Provide a letter to the director of taxation  
2                 specifying the amount of the tax credit per qualified  
3                 production for each taxable year that a tax credit is  
4                 claimed and the cumulative amount of the tax credit  
5                 for all years claimed; and

6           (4) Submit a report to the legislature no later than  
7                 twenty days prior to the convening of each regular  
8                 session detailing the non-aggregated qualified  
9                 production costs that form the basis of the tax credit  
10                claims and expenditures, itemized by taxpayer, in a  
11                redacted format to preserve the confidentiality of the  
12                taxpayers claiming the credit.

13           Upon each determination required under this subsection, the  
14   department of business, economic development, and tourism shall  
15   issue a letter to the taxpayer, regarding the qualified  
16   production, specifying the qualified production costs and the  
17   tax credit amount qualified for in each taxable year a tax  
18   credit is claimed. The taxpayer for each qualified production  
19   shall file the letter with the taxpayer's tax return for the  
20   qualified production to the department of taxation.  
21   Notwithstanding the authority of the department of business,





1 economic development, and tourism under this section, the  
2 director of taxation may audit and adjust the tax credit amount  
3 to conform to the information filed by the taxpayer.

4 (j) Total tax credits claimed per qualified production  
5 shall not exceed \$15,000,000.

6 (k) Qualified productions shall comply with subsections  
7 (d), (e), (f), and (h).

8 ~~[(1) The total amount of tax credits allowed under this~~  
9 ~~section in any particular year shall be \$35,000,000; however, if~~  
10 ~~the total amount of credits applied for in any particular year~~  
11 ~~exceeds the aggregate amount of credits allowed for such year~~  
12 ~~under this section, the excess shall be treated as having been~~  
13 ~~applied for in the subsequent year and shall be claimed in such~~  
14 ~~year; provided that no excess shall be allowed to be claimed~~  
15 ~~after December 31, 2025.~~

16 ~~(m)]~~ (1) For the purposes of this section:

17 "Commercial":

18 (1) Means an advertising message that is filmed using  
19 film, videotape, or digital media, for dissemination  
20 via television broadcast or theatrical distribution;



1           (2) Includes a series of advertising messages if all parts  
2                   are produced at the same time over the course of six  
3                   consecutive weeks; and

4           (3) Does not include an advertising message with  
5                   Internet-only distribution.

6           "Digital media" means production methods and platforms  
7 directly related to the creation of cinematic imagery and  
8 content, specifically using digital means, including but not  
9 limited to digital cameras, digital sound equipment, and  
10 computers, to be delivered via film, videotape, interactive game  
11 platform, or other digital distribution media.

12          "Post-production" means production activities and services  
13 conducted after principal photography is completed, including  
14 but not limited to editing, film and video transfers,  
15 duplication, transcoding, dubbing, subtitling, credits, closed  
16 captioning, audio production, special effects (visual and  
17 sound), graphics, and animation.

18          "Production" means a series of activities that are directly  
19 related to the creation of visual and cinematic imagery to be  
20 delivered via film, videotape, or digital media and to be sold,  
21 distributed, or displayed as entertainment or the advertisement



1 of products for mass public consumption, including but not  
2 limited to scripting, casting, set design and construction,  
3 transportation, videography, photography, sound recording,  
4 interactive game design, and post-production.

5 "Qualified production":

6 (1) Means a production, with expenditures in the State,  
7 for the total or partial production of a feature-  
8 length motion picture, short film, made-for-television  
9 movie, commercial, music video, interactive game,  
10 television series pilot, single season (up to  
11 twenty-two episodes) of a television series regularly  
12 filmed in the State (if the number of episodes per  
13 single season exceeds twenty-two, additional episodes  
14 for the same season shall constitute a separate  
15 qualified production), television special, single  
16 television episode that is not part of a television  
17 series regularly filmed or based in the State,  
18 national magazine show, or national talk show. For  
19 the purposes of subsections (d) and (j), each of the  
20 aforementioned qualified production categories shall



1 constitute separate, individual qualified productions;  
2 and

3 (2) Does not include:

4 (A) News;

5 (B) Public affairs programs;

6 (C) Non-national magazine or talk shows;

7 (D) Televised sporting events or activities;

8 (E) Productions that solicit funds;

9 (F) Productions produced primarily for industrial,

10 corporate, institutional, or other private

11 purposes; and

12 (G) Productions that include any material or

13 performance prohibited by chapter 712.

14 "Qualified production costs" means the costs incurred by a  
15 qualified production within the State that are subject to the  
16 general excise tax under chapter 237 or income tax under this  
17 chapter and that have not been financed by any investments for  
18 which a credit was or will be claimed pursuant to section  
19 235-110.9. Qualified production costs include but are not  
20 limited to:



- 1           (1)   Costs incurred during preproduction such as location
- 2                scouting and related services;
- 3           (2)   Costs of set construction and operations, purchases or
- 4                rentals of wardrobe, props, accessories, food, office
- 5                supplies, transportation, equipment, and related
- 6                services;
- 7           (3)   Wages or salaries of cast, crew, and musicians;
- 8           (4)   Costs of photography, sound synchronization, lighting,
- 9                and related services;
- 10          (5)   Costs of editing, visual effects, music, other post-
- 11                production, and related services;
- 12          (6)   Rentals and fees for use of local facilities and
- 13                locations, including rentals and fees for use of state
- 14                and county facilities and locations that are not
- 15                subject to general excise tax under chapter 237 or
- 16                income tax under this chapter;
- 17          (7)   Rentals of vehicles and lodging for cast and crew;
- 18          (8)   Airfare for flights to or from Hawaii, and interisland
- 19                flights;
- 20          (9)   Insurance and bonding;



1 (10) Shipping of equipment and supplies to or from Hawaii,  
2 and interisland shipments; and

3 (11) Other direct production costs specified by the  
4 department in consultation with the department of  
5 business, economic development, and tourism;

6 provided that any government-imposed fines, penalties, or  
7 interest that are incurred by a qualified production within the  
8 State shall not be "qualified production costs".

9 SECTION 3. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act, upon its approval, shall apply to  
15 taxable years beginning after December 31, 2018.



**Report Title:**

Economic Development; Motion Picture, Digital Media, and Film  
Production Income Tax Credit; Cap Repeal

**Description:**

Repeals the annual \$35,000,000 rolling cap for the motion  
picture, digital media, and film production income tax credit.  
Applies to taxable years beginning after December 31, 2018.  
(SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*

